

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:14-cr-00244

DONALD L. BLANKENSHIP,

Defendant.

ORDER

The Court has reviewed the United States' *Appeal of Magistrate Judge's Decision to Permit Travel of Defendant* (Document 22), filed on November 21, 2014, and *Defendant Donald L. Blankenship's Response to the Government's Appeal of Court-Approved Travel Home for Thanksgiving* (Document 23), filed on November 24, 2014, as well as the *United States' Reply Concerning Appeal of Magistrate Judge's Decision to Permit Travel by Defendant* (Document 24), also filed on November 24, 2014. The Court has also reviewed the attached exhibits and construes the United States' Appeal as a motion to reconsider this pretrial matter under 28 U.S.C. § 636.

The Court notes that a formal order has yet to be entered by the Magistrate Judge with respect to this issue, but does observe that a *Sealed Status Conference* was held on November 21, 2014, with an accompanying Magistrate Judge Daybook Entry referencing the status conference (See Document 21), wherein it is noted that the "Court granted request to travel over United States'

objection.” (*Id.* at 1.) The Court further recognizes that the November 20, 2014 *Order Setting Conditions of Release* (Document 15) dictates that “[t]ravel is restricted to the Southern District of West Virginia, Pike County, Kentucky[,] and for the specific purpose of meeting with counsel[,] to the District of Columbia[,] and other travel as pre-approved by the Court.” (Document 15 at 2) (emphasis added).

The United States argues that the requested travel to Las Vegas is “more akin to a request to go on vacation” and that the travel poses a substantial risk of flight. (Document 22 at 2.) The Defendant responds in opposition that “Mr. Blankenship was scheduled to fly home to Nevada on Saturday, November 22, 2014, under the travel plan approved by Judge VanDervort,” and further notes that “the government neither sought nor obtained a stay of that ruling,” and additionally, “the probation office cleared him to travel *after* the government filed the instant appeal.” (Document 23 at 1.)

Crucially, the Defendant maintains, and the United States has not rebutted, that “[i]n chambers, prior to the bond hearing, counsel advised Judge VanDervort, the government, and the probation office that, if the release order included travel restrictions, Mr. Blankenship would be requesting permission to travel home to Nevada to spend Thanksgiving with his fiancé and family,” and that the Magistrate Judge “approved the request during a telephonic hearing the following day,” with the probation office raising no objection to the requested travel for Thanksgiving. (Document 23 at 2.)

After careful consideration and based on the (limited) record, the Court finds the Magistrate Judge’s decision is not clearly erroneous or contrary to law. Accordingly, the Court **ORDERS** that the United States’ *Appeal of Magistrate Judge’s Decision to Permit Travel of*

Defendant (Document 22) be **DENIED**, and that Magistrate Judge VanDervort's approval of travel for the Defendant be **AFFIRMED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: November 25, 2014


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA